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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIAN VALENCIA SANCHEZ,

Defendant and Appellant.

H045455

(Santa Clara County

Super. Ct. No. C1480786)

In November 2013, defendant Adrian Valencia Sanchez, then 20 years old, was driving while intoxicated and crashed his car into Frankie Jimenez and Brook Gaona. Jimenez was killed and Gaona gravely injured. Defendant pleaded no contest to vehicular manslaughter without gross negligence (Pen. Code, § 191.5, subd. (b)),¹ driving under the influence of alcohol and causing injury (Veh. Code, § 23153, subd. (a)), driving with a blood-alcohol level of 0.08 percent or more and causing injury (Veh. Code, § 23153, subd. (b)), and operating a vehicle in violation of license restrictions (Veh. Code, § 14603). The trial court suspended imposition of sentence and placed defendant on probation for five years. After a subsequent restitution hearing, the court ordered victim restitution of \$692,475.

¹ Statutory references are to the Penal Code unless otherwise specified.

On appeal, defendant challenges the restitution order on multiple grounds. He contends that the trial court abused its discretion by not accounting for the time value of money. In the alternative, he argues that trial counsel was ineffective for raising the issue but failing to introduce evidence or seek a stipulation as to an appropriate discount rate. He also challenges the sufficiency of the evidence as to the amount of restitution ordered. Finally, he argues that the trial court abused its discretion by calculating the lost-wages restitution based on Gaona's gross income, rather than his net income.

We conclude that reversal is required because trial counsel rendered ineffective assistance when he failed to offer evidence or seek a stipulation as to an appropriate discount rate. We reject defendant's remaining contentions.

I. Background

Jimenez's three children sought restitution from defendant for loss of support and attorney's fees. Two of Jimenez's children, Abrianna and Elias, sought total restitution of \$134,538.67 for loss of support, attorney's fees, funeral and burial expenses, and interest. The loss of support claim was based on the assertion that Jimenez had provided both Abrianna and Elias support payments of approximately \$500 per month. In turn, that number was multiplied by the number of years until each child reached the age of 18. The children's mothers each submitted declarations attesting to the fact that Jimenez regularly provided support to each child of approximately \$500 per month.

Jimenez's third child, Alynna, sought total restitution of \$93,232.90 for loss of support, attorney's fees, funeral and burial expenses, and interest. The loss of support claim was based on the assertion that "Jimenez would have been paying \$967 in support per month at the time of his demise," a calculation based on Jimenez's earnings, the mother's and stepfather's earnings, and "California's state-approved child support

calculator.” Alynna’s mother submitted a declaration stating that Jimenez was Alynna’s father.

Gaona sought restitution totaling \$3,576,258.33, which included \$139,000 in medical costs, \$262,000 in lost wages to date, \$3,145,000 in future lost earnings, \$26,208.33 in interest, and \$4,050 in attorney’s fees. Gaona asserted that he had suffered serious and significant physical injuries. He further asserted that he had “sustained severe psychological trauma resulting in patent and severe Post-Traumatic Stress Disorder (‘PTSD’),” which continued to interfere with his personal life and his health, and prevented him from working in the future. With respect to medical costs, he stated that he had “incurred medical charges in excess of \$184,000, with write-offs of only \$45,000, for paid medical expenses to date in excess of \$139,000.” Gaona’s past and future wage calculations were based on a yearly salary of approximately \$85,000 per year—and an assumption that he would “in all probability never return to comparable or even full employment, if he is ever able to return to gainful employment at all.” To support his \$85,000 figure, Gaona submitted a table of weekly gross pay from 2012, showing he earned \$85,038.43 for the year.

Defendant disputed some aspects of the requested restitution. With respect to Abrianna and Elias, he challenged the \$500 per month child support figure. He argued that except for the declarations of Abrianna’s and Elias’s mothers, there was no evidentiary support for this amount. With respect to Alynna’s request, defendant contended too that there was no evidentiary support for the \$967 figure. Finally, defendant argued that Gaona’s medical costs lacked evidentiary support because he did not “submit any documentation or billing records” reflecting his stated costs.² He also

² Gaona later filed additional documentation reflecting his medical costs. In addition to medical bills, Gaona also filed three medical reports prepared by Dr. Howard M. Greils.

challenged Gaona's request for lost wages, noting that there was no evidence of his past earnings or evidence that he was incapable of working for the rest of his life.

At the restitution hearing, the trial court asked Alynna's counsel to address Alynna's loss of support claim. Counsel admitted that Alynna's "relationship with her father was newer" than his relationship with his other two children. He noted that while "there [were] questions as to whether he actually knew about [her] existence for some years," they had since developed the "same productive, healthy, supportive relationship as the other kids." After being pressed on the \$967 figure, counsel stated he was willing to accept the same \$500 per month figure as the other children.

Defendant reiterated his objection based on the lack of evidentiary support for the requested loss-of-support figures for Jimenez's children. He acknowledged the declarations in support of the \$500 per month figure, but characterized the statements as "oblique" and "no doubt drafted by their attorneys." He faulted them for failing to include "check stubs" or any "accounting" of support payments made by Jimenez for Abrianna and Elias. Separately, he also raised the issue of whether "future damages have to be discounted to present value," citing *People v. Pangan* (2013) 213 Cal.App.4th 574 (*Pangan*). He asserted that *Pangan* stood for the proposition that "future damages have to be discounted to present value," explaining that "\$500 six years from now is not \$500 today, it's going to be something less than that." He did not present evidence on or otherwise suggest to the court what might be an appropriate amount of money. Next, defendant objected to Gaona's restitution award for lost wages, arguing that it should be based only on net wages, not gross wages.

Turning to Gaona's request for restitution for medical costs, defendant informed the court that he would "submit on the documentation that has been produced." He added that he would ask Gaona "to verify that those bills do not reflect bills that were put out that were later compromised." He explained that "it's not uncommon for hospitals to

have a standard rate they put on but they are oftentimes compromised for much lower values.” Thus, he stated that he “would like verification if those numbers are, in fact, the amounts which [were] paid as opposed to their billing practice, if that makes sense.”

Finally, defendant highlighted some information contained in one of Dr. Greil’s medical reports concerning Gaona’s psychological and physical state. He noted that according to the report, Gaona is able to “do cooking, cleaning, laundry, he does the shopping, he goes for daily walks, he goes to the gym each day,” participating in yoga, Pilates, “light weight lifting,” swimming, and Taekwondo. He pointed to statements that Gaona was “open” to employment “if it’s something he enjoys.” He noted that according to the report, “PTSD is a condition which is responsive to pharmacotherapy . . . and psychotherapy; . . . it’s a treatable condition.” Thus, he asserted, with respect to Gaona’s request for future lost wages, that “it’s possible [Gaona] will be able to again become gainfully employed in years, several years” based on the progression of his clinical treatment.

Counsel for Abrianna and Elias contended that in this instance the court was not obligated to discount the restitution award to present value. He asserted that it was defendant’s burden to establish a reduced restitution award, that he “was afforded the opportunity” to present evidence on the subject, and that he failed to do so. Counsel added that even if the court were to reject this argument, “with interest rates where they are at 1, 1 1/4, 1 1/2 percent, the discount rate is nominal.” To that end, counsel argued that when applied to the \$500 per month payments for each child, application of the discount rate to reduce the award to present value would result in a very small reduction in the restitution award.

Gaona’s counsel echoed this point, also arguing that it is “defendant’s burden . . . to introduce evidence of discount rate because it’s to the defendant’s benefit, and it’s no error to refuse reduction when the defendant is presenting no evidence of a discount rate

which is the case here.” Responding to defendant’s request for clarification as to medical costs, counsel also confirmed to the court that the amount requested for medical costs reflected “the amount paid for medical services.”

The trial court ordered restitution to Jimenez’s three children. The court accepted the representations of Abrianna’s and Elias’s mothers that Jimenez provided \$500 per month of support for each child. In addition, the court determined that although there was no evidence that Jimenez had provided support for Alyna, it was “reasonable to accept” the same amount “as support for [Alyna] also.” Accordingly, the court ordered restitution to be paid to each child in the amount of \$500 per month, from the date of Jimenez’s death until each child reached the age of 18: \$56,500 for Abrianna, \$35,000 for Elias, and \$45,000 for Alyna.³ The court deducted \$5,000 from each of the children’s awards based on insurance benefits already paid to each child by defendant’s insurance. (See *People v. Bernal* (2002) 101 Cal.App.4th 155 [appropriate to reduce restitution based on payments made on defendant’s behalf].) The trial court also awarded attorney’s fees but declined to order restitution for funeral and burial expenses.

With respect to Gaona, the trial court ordered restitution consisting of \$139,000 for medical costs, \$425,000 for lost wages, and \$8,100 in attorney’s fees, for a total of \$572,100, less \$15,000 in insurance benefits paid by defendant’s insurance. The court calculated lost wages based on a salary of \$85,000 multiplied by five years from the date of the accident. The court stated it based the calculation on “Gaona’s salary at the time of the collision on November 1, 2013.” While the court acknowledged that “Gaona suffered significant physical and mental injuries as a result of the collision,” the court believed “after a thorough review of the medical records” that Gaona would eventually be able to “resume full employment or secure a job that provides him with comparable pay.”

³ At the time the restitution order was issued, Abrianna was 13, Elias was 16, and Alyna was 14.

II. Discussion

A. General Principles of Restitution

Section 1202.4 provides for full restitution “in every case in which a victim has suffered an economic loss as a result of the defendant’s conduct . . . based on the amount of loss claimed by the victim or victims or any other showing to the court.” (§ 1202.4, subd. (f).) “The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution.” (§ 1202.4, subd. (f)(1).) At that hearing, the prosecution bears the initial burden of making a prima facie showing of the victim’s economic loss. (*People v. Millard* (2009) 175 Cal.App.4th 7, 26.) “Once the victim makes a prima facie showing of economic losses incurred as a result of the defendant’s criminal acts, the burden shifts to the defendant to disprove the amount of losses claimed by the victim.” (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543 (*Gemelli*).) The standard of proof is preponderance of the evidence. (*Ibid.*)

Section 1202.4 does not by its terms require any particular type of evidence, providing that “‘the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court.’” (*Gemelli, supra*, 161 Cal.App.4th at p. 1542.) “‘Due process does not require a judge to draw sentencing information through the narrow net of courtroom evidence rules [;] . . . sentencing judges are given virtually unlimited discretion as to the kind of information they can consider and the source from whence it comes.’ [Citation.]” (*People v. Baumann* (1985) 176 Cal.App.3d 67, 81.)

B. Standard of Review

“[W]e review the trial court’s restitution order for abuse of discretion. [Citations.] The abuse of discretion standard is ‘deferential,’ but it ‘is not empty.’ [Citation.] ‘[I]t

asks in substance whether the ruling in question “falls outside the bounds of reason” under the applicable law and the relevant facts [citations].’ [Citation.] Under this standard, while a trial court has broad discretion to choose a method for calculating the amount of restitution, it must employ a method that is rationally designed to determine the surviving victim’s economic loss. To facilitate appellate review of the trial court’s restitution order, the trial court must take care to make a record of the restitution hearing, analyze the evidence presented, and make a clear statement of the calculation method used and how that method justifies the amount ordered.” (*People v. Giordano* (2007) 42 Cal.4th 644, 663-664, fn. omitted (*Giordano*).) “‘When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.’” (*People v. Mearns* (2002) 97 Cal.App.4th 493, 499 (*Mearns*).)

C. Discounting to Present Value

“The present value of a gross award of future damages is that sum of money prudently invested at the time of judgment which will return, over the period the future damages are incurred, the gross amount of the award. [Citations.] ‘The concept of present value recognizes that money received after a given period is worth less than the same amount received today. This is the case in part because money received today can be used to generate additional value in the interim.’ [Citation.] The present value of an award of future damages will vary depending on the gross amount of the award, and the timing and amount of the individual payments.” (*Holt v. Regents of the University of California* (1999) 73 Cal.App.4th 871, 878.)

1. Abuse of Discretion

Defendant asserts that the trial court abused its discretion by failing to consider the time value of money in calculating the restitution award. He relies on *Pangan*. In

Pangan, the victim was injured after his vehicle was struck by the defendant's vehicle. (*Pangan, supra*, 213 Cal.App.4th at pp. 576-577.) Because of his injuries, the victim was forced to immediately retire from his job. The victim sought restitution for the \$246.50 per month decrease in his pension payments caused by the forced early retirement. (*Id.* at p. 577 & fn. 1.) The trial court ultimately ordered restitution for the decrease in pension benefits by taking the monthly amount of the decrease in pension payments and multiplying it by 24 years, which was the victim's life expectancy beginning the year he could receive his pension payments, for a total of approximately \$70,000. (*Id.* at p. 578 & fn. 3.)

On appeal, the Fourth District Court of Appeal determined that "the trial court erred" by not considering the "time value of money" in calculating the "actual value" of the economic loss to the victim. (*Pangan, supra*, 213 Cal.App.4th at p. 582.) The court explained that "a lump sum now, reflecting future payments, must be discounted to reflect the fact the recipient is receiving the money now." (*Ibid.*) Applying the principle to the facts before it, the court in *Pangan* stated that, if the victim had tried to get a lump-sum payment for his right to \$246.50 for the rest of his life, "there is no way he would receive anywhere near \$70,000 for that stream of payments in the open marketplace. Any payment would be subject to some sort of discount to reflect the fact he would be receiving it all now. And the point of a restitution award is that the crime perpetrator is indeed responsible to pay the award now, which is why the award carries interest from the date of sentencing or date of loss. (See Pen. Code, § 1202.4, subd. (f)(3)(G) ['Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.'].) That has to be factored into the award." (*Pangan*, at p. 581, fn. & italics omitted.)

In *Pangan*, the court held without qualification that "[i]t is an abuse of discretion [for a trial court] not to account for the time value of money in determining a victim's

economic loss based on a diminished or lost stream of future payments.” (*Pangan*, *supra*, 213 Cal.App.4th at p. 576, italics omitted.) Although concluding that it was error not to discount the award to present value, the *Pangan* court did not reverse the restitution order on this basis because it also concluded that the defendant had “waived” the issue. (*Id.* at pp. 581-582.) Rather, as will be discussed more thoroughly below in the section addressing ineffective assistance, the court determined that trial counsel was ineffective for not raising the issue in the first instance. (*Id.* at p. 584.)

In the instant case, defendant did not submit any evidence as to the appropriate discount rate at the restitution hearing. After the victims made “a prima facie showing of economic losses incurred as a result of” defendant’s criminal actions, “the burden shift[ed] to [defendant] to disprove the amount of losses claimed by the victim.” (*Gemelli*, *supra*, 161 Cal.App.4th at p. 1543.) Defendant’s argument in the trial court was inadequate without evidence as to an appropriate discount rate. In the absence of any evidence, defendant did not meet his burden to “disprove the amount of losses claimed by the victim.” (*Ibid.*) Here, the victims made a prima facie showing as to their amount of losses, and defendant failed to rebut that showing. Because there was “‘a factual and rational basis for the amount of restitution ordered by the trial court,’” we find no abuse of discretion with respect to the trial court not discounting portions of the restitution to present value. (*Mearns*, *supra*, 97 Cal.App.4th at p. 499.)

2. Ineffective Assistance of Counsel

In the alternative, defendant contends that his trial counsel, Charles Hendrickson, was prejudicially deficient. To prevail on a claim of ineffective assistance of counsel, a defendant must establish both that his counsel’s performance was deficient and that he suffered prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687 (*Strickland*)). A showing that “counsel’s representation fell below an objective standard of reasonableness” “under prevailing professional norms” satisfies the deficient

performance prong of this test. (*Id.* at p. 688.) “[A] court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’ [Citation.]” (*Id.* at p. 689.) With respect to prejudice, a defendant must show “there is a reasonable probability”—meaning “a probability sufficient to undermine confidence in the outcome”—“that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” (*Id.* at p. 694.)

“It is particularly difficult to prevail on an appellate claim of ineffective assistance [on direct appeal].” (*People v. Mai* (2013) 57 Cal.4th 986, 1009, italics omitted (*Mai*)). We will reverse “only if (1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation. All other claims of ineffective assistance are more appropriately resolved in a habeas corpus proceeding. [Citations.]” (*Ibid.*)

Defendant argues that “[t]here is no satisfactory explanation” for trial counsel’s decision to apprise the court of the *Pangan* rule, “but fail to furnish any evidence of a discount rate or seek a stipulation as to an appropriate rate.” The Attorney General asserts that “there are satisfactory explanations for that decision,” noting that “counsel may have concluded that expounding on the time value of money would undermine his arguments that the court should not award victim Brook Gaona any future wage loss . . . and that insufficient evidence supported victim Frankie Jimenez’s children’s requested restitution.” The Attorney General also posits that counsel may “have feared that drawing additional attention to the time value of money could lead the court to more closely scrutinize its restitution awards,” potentially resulting in increased awards that accounted for “inflation and potentially rising salaries and child support over time.”

As previously noted, in *Pangan* the appellate court concluded that the defendant's trial attorney rendered ineffective assistance by failing to object to the restitution award on the ground that the award failed to account for the time value of money. (*Pangan, supra*, 213 Cal.App.4th at pp. 583-584.) Addressing the attorney's performance, the court determined that restitution by statute requires the calculation of a victim's actual economic loss, and that "criminal law victim restitution defense entails at least *some* acquaintance with the idea of the time value of money." (*Id.* at p. 583.) Regarding whether the defendant was prejudiced, the court determined that "a full value award was too high"—the court "[saw] no way in which [the defendant's] trial attorney had anything to lose by raising the need to discount the \$70,000 to present value." (*Id.* at p. 584.)

In contrast to *Pangan*, in *People v. Arce* (2014) 226 Cal.App.4th 924 (*Arce*), the First District Court of Appeal rejected the defendant's claim that his trial attorney rendered ineffective assistance by not seeking a discount to present value for a portion of a victim restitution order for future lost wages. The trial court had calculated future lost wages by taking a base salary of \$41,739 and multiplying it by 5.5 years. (*Id.* at pp. 928-929.) The trial court then reduced the amount of future lost wages of nearly \$230,000 by the amount of disability payments the victim would receive over the same timeframe, for a final award of nearly \$144,000 in future lost wages. (*Id.* at p. 929.)

In rejecting the defendant's ineffective assistance claim, the court in *Arce* determined that "there *could* be satisfactory explanations for why [the defendant's] counsel did not ask for a time-value discount." (*Arce, supra*, 226 Cal.App.4th at p. 931.) The court suggested that trial counsel "may have simply believed that raising the issue would undercut his primary argument that *no* future lost wages could be awarded." (*Ibid.*) Or, perhaps, trial counsel believed raising the issue "might lead to increased scrutiny and a higher award." (*Ibid.*) Trial counsel, the court posited, "may have believed, for example, that if the trial court reexamined the victim's future lost earnings it

would increase its base amount of the victim's projected annual earnings (\$41,739) in light of the evidence that the victim's earnings had been progressively rising. Or he may have believed that the court would increase the award by adding time to the multiplier of the prosecution's projected five and one-half year recovery period. He also may have understood that the time-value principle worked against [the defendant] to the extent that its application to the future disability benefits would have reduced the offset [he] received for them. Accepting an award that is favorable in some aspects may make particular sense when the award is not likely to be reduced by much because the potential discount rate is low." (*Ibid.*) The appellate court concluded that "trial counsel here could have reasonably believed that [the defendant] did have something to lose [by raising the need to discount for present value] because the trial court might have increased its award for future lost wages." (*Id.* at p. 932, italics omitted.)

In the instant case, with respect to the first *Strickland* prong, defendant's trial counsel was deficient to the extent counsel raised the issue but failed to present evidence or a stipulation as to an appropriate discount rate. (*Pangan, supra*, 213 Cal.App.4th at p. 583.) In addition, the record in this case reflects that there could be no satisfactory explanation for trial counsel's omission—it cannot be explained as a strategic or tactical omission. (*Mai, supra*, 57 Cal.4th at p. 1009.) Echoing *Arce*, the Attorney General explains counsel's omission as a tactical decision calculated to increase attention to his other arguments, and to avoid scrutiny that could result in a higher restitution figure. But that it not what happened in this case. (Cf. *Arce, supra*, 226 Cal.App.4th at p. 931 [observing "there *could* be satisfactory explanations for why [the defendant's] counsel did not ask for a time-value discount."].) Here, trial counsel *did* ask for a time-value discount, but did so without providing "the trial court [with] evidence on the issue of the appropriate discount rate and calculations." (*Pangan, supra*, 213 Cal.App.4th at p. 586.) Although counsel raised the issue, the trial court could not act without evidence.

(Cf. *Wilson v. Gilbert* (1972) 25 Cal.App.3d 607, 613-614 [no error in refusing to give jury instruction as to calculating “‘present cash value’” because “[t]he instruction would have required the jury to [calculate the present value] without the benefit of evidence or advice as to the complicated factors of compounding and discounting which the instruction necessarily involved.”].) To raise the issue without providing evidence “fell below an objective standard of reasonableness” “under prevailing professional norms,” as reflected in *Pangan*. (*Strickland*, *supra*, 466 U.S. at pp. 687-688.)

With respect to the second *Strickland* prong, we conclude that there is a reasonable probability that “a full value award was too high” here. (*Pangan*, *supra*, 213 Cal.App.4th at p. 584.) At the restitution hearing, counsel for Abrianna and Elias observed that “the discount rate [was] nominal,” amounting to something slightly over 1 percent. Counsel apparently believed that the discount rate would be appropriately applied to the future stream of payments for each of the children, which amounted to \$56,500 for Abrianna, \$35,000 for Elias, and \$45,000 for Alyna. Even a low discount rate applied to these figures would result in a meaningful reduction in the restitution award.⁴ When applied to the portions of the restitution award attributable to future payments, “there is a reasonable probability” that “the result of the proceeding would have been different.” (*Strickland*, *supra*, 466 U.S. at p. 694.)

In sum, we conclude that defendant’s trial counsel’s performance was deficient and that it prejudiced defendant.

⁴ We note that even if the difference is nominal, any difference however minor will grow over time, given the interest rate of 10 percent per annum that accrues as of the date of sentencing or loss. (See § 1202.4, subd. (f)(3)(G).)

D. Sufficiency of the Evidence

“In reviewing the sufficiency of the evidence [supporting a restitution order], the “power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,” to support the trial court’s findings.’ [Citations.]” (*People v. Baker* (2005) 126 Cal.App.4th 463, 468-469 (*Baker*).) “If the circumstances reasonably justify the [trial court’s] findings,’ the judgment may not be overturned when the circumstances might also reasonably support a contrary finding. [Citation.] We do not reweigh or reinterpret the evidence; rather, we determine whether there is sufficient evidence to support the inference drawn by the trier of fact. [Citations.]” (*Id.* at p. 469.)

1. Alyna’s Economic Loss

Defendant challenges the court’s restitution order as it pertains to Alyna. He argues that she “suffered no economic loss” because she “did not receive any financial support from Jimenez.” Defendant also suggests there is insufficient evidence that Alyna is even Jimenez’s daughter.

In ordering restitution for Alyna, the trial court noted that while “[n]o formal support order was in place for any of the children,” Jimenez was “[b]y all accounts . . . a loving and caring father who was actively involved with his children and provided them with support to the best of his ability.” The trial court accepted as true “the representations contained in the declarations” of Abrianna’s and Elias’s mothers that “Jimenez provided support . . . in the sum of \$500/month.” Likewise, with respect to Alyna, the court explained that “[w]hile there is no evidence of the actual amount of support that [Jimenez] provided for Alyna, it is reasonable to accept the amount of \$500/month as support for her also.”

We conclude that substantial evidence supports the restitution ordered for Alyna. The court based the \$500 per month of support figure on declarations submitted by the

mothers of Jimenez's other children. Further, Alynna's mother submitted a declaration that Jimenez was Alynna's father. Defendant's suggestion that there is a lack of evidentiary support for Alynna's parentage amounts to a challenge to the sufficiency of the evidence. In that respect, we decline to reweigh or reinterpret the evidence. (See *Baker, supra*, 126 Cal.App.4th at pp. 468-469.) In addition, it is irrelevant whether Alynna may have received support in the past. The trial court's obligation was to determine Alynna's anticipated *future* loss of support. (See *Giordano, supra*, 42 Cal.4th at pp. 665-666.) The trial court's implicit finding that Jimenez would support all his children to the same degree was a reasonable construction of the evidence.

2. Gaona's Medical Expenses

Defendant argues that the court's order of restitution to Gaona of \$139,000 for medical expenses is not supported by substantial evidence. Defendant asserts: (1) the court's explanation of how it arrived at the \$139,000 figure was inadequate; (2) it is unclear based on the medical documentation how much was actually paid; and (3) some of the submitted medical documents include expenses incurred for injuries that were not caused by defendant's actions.

Defendant claims that the trial court failed to explain how it arrived at the \$139,000 figure. In the trial court, Gaona requested \$139,000 for medical costs. In response to defendant's assertion that the medical costs lacked evidentiary support, Gaona submitted additional documentation to support his claim. During the restitution hearing, defendant, apparently satisfied with the additional evidentiary support, submitted the issue based "on the documentation that has been produced" but asked that Gaona's counsel verify that the medical expenses claimed were amounts paid rather than amounts billed. Gaona's counsel confirmed that the \$139,000 figure reflected "the amount paid for medical services." The trial court "carefully reviewed the medical records and billings" and based on those documents found "it appropriate to award medical costs in

the sum of \$139,000 based upon the documents submitted.” In short, the trial court did as it was required—“to make a record of the restitution hearing, analyze the evidence presented, and make a clear statement of the calculation method used and how that method justifies the amount ordered.” (*Giordano, supra*, 42 Cal.4th at pp. 663-664.)

To the extent defendant describes the medical documentation as unclear, we are not persuaded. Defendant notes that it is unclear how much was actually paid to St. Helena Hospital Center for Behavioral Health, which billed \$49,048. Even excluding those bills, we are able to calculate a figure exceeding \$139,000 in medical costs that appear to have been actually paid, as opposed to billed.⁵ The documentation is not indecipherable and clearly shows large sums of money were paid for a number of significant medical procedures. Defendant offers no alternative figure. In short, substantial evidence supports the trial court’s restitution award of \$139,000 for Gaona’s medical costs. (See *Baker, supra*, 126 Cal.App.4th at pp. 468-469.)

We also find unpersuasive defendant’s causation argument. Defendant contends that there is “no factual or rational basis to conclude that [defendant’s DUI crash of November 1, 2013] was a substantial factor in causing Gaona to injure his left index finger on May 20, 2014.” Tort principles of causation apply to victim restitution claims in criminal cases—more specifically, cause in fact and proximate causation. (*People v. Jones* (2010) 187 Cal.App.4th 418, 424-427 (*Jones*)). “‘An act is a cause in fact if it is a necessary antecedent of an event,’” while “‘proximate cause “is ordinarily concerned, not with the fact of causation, but with the various considerations of policy that limit an actor’s responsibility for the consequences of his conduct.”’” (*Id.* at p. 425.) “‘“The Restatement formula uses the term substantial factor ‘to denote the fact that the

⁵ Defendant also points to medical charges that were incurred before the DUI crash, from 2008 to 2010. Those charges (approximately \$1,552) amount to a small fraction of the medical bills submitted. There is no indication that those bills were included in Gaona’s \$139,000 figure or the trial court’s calculation.

defendant's conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause.'"" (People v. Holmberg (2011) 195 Cal.App.4th 1310, 1321, italics omitted (Holmberg).) ""“In general, an ‘independent’ intervening cause will absolve a defendant of criminal liability. [Citation.] However, in order to be ‘independent’ the intervening cause must be ‘unforeseeable . . . an extraordinary and abnormal occurrence, which rises to the level of an exonerating, superseding cause.’ [Citation.]”” (Jones, at pp. 426-427.)

Gaona “injured his left index finger . . . when he had an anxiety attack, passed out and fell . . .” Gaona explained that he suffered from “uncontrollable anxiety . . .” Dr. Greils, in his medical evaluation report, concluded that “the events of November 1, 2013 were causal in an amount of 100% to [Gaona’s] psychiatric injury which, obviously, far exceeds substantial cause.” After the accident Gaona “continue[d] to struggle with severe emotional distress,” including “panic attacks ‘out of the blue’ with heart palpitations, lightheadedness, chest tightness[,] and cold sweats.” Gaona explained that his anxiety attacks resulted from the trauma and the aftermath of the DUI crash. Those anxiety attacks sometimes resulted in lightheadedness and ultimately an injury to Gaona’s hand during a fall. None of this is so “‘unforeseeable,’” “‘extraordinary,’” or “‘abnormal’” as to constitute an “‘exonerating, superseding cause.’” (Jones, supra, 187 Cal.App.4th at pp. 427-428.) The evidence supported the conclusion that defendant’s conduct was a substantial factor in causing Gaona’s finger injury. (See Holmberg, supra, 195 Cal.App.4th at p. 1321.) Thus, substantial evidence supports inclusion of the medical costs for Gaona’s injured finger. (See Baker, supra, 126 Cal.App.4th at p. 469.)

3. Restitution for Gaona’s Lost Wages

Defendant asserts that the court’s restitution order awarding Gaona five years of lost wages was not supported by substantial evidence. Defendant argues that Gaona’s physical injuries were relatively minor and that despite “continued physical vitality, he

has refused to seek employment.” He also contends that the trial court downplayed evidence that Gaona was malingering.

In its restitution order, the court explained that Gaona “now suffers from significant PTSD and has found it difficult, both because of this and because of his lingering physical injuries, to get back to work.” But, the court believed that with the proper treatment, Gaona would be able to “resume full employment or secure a job that provides him with comparable pay.” The court based its conclusion on Gaona’s psychiatric report and evidence indicating that his PTSD was real and significant but treatable. The trial court stated that its conclusion was based on “a thorough review of the medical records submitted.”

Substantial evidence supported the trial court’s restitution finding as to lost wages. Defendant argues that the trial court undervalued evidence suggesting Gaona was able to work and overvalued evidence as to his inability to work due to PTSD. This argument amounts to an invitation to “reweigh or reinterpret the evidence” submitted. (*Baker, supra*, 126 Cal.App.4th at p. 469.) Whether or not the evidence supports an alternative conclusion, we may not substitute our judgment for that of the trial court. (*Ibid.*) The trial court’s finding that Gaona was entitled to only five years of lost wages, from the date of the accident, reflected a finding that Gaona would soon be able to return to work. The medical reports cited by the trial court are more than sufficient to support the trial court’s finding as to Gaona’s lost wages. (*Ibid.*)

E. Gross Versus Net Wages

Finally, defendant asserts that the trial court abused its discretion in awarding Gaona restitution for wages based on his gross wages, rather than his net wages. Defendant also asserts that the trial court did not adequately explain “how it arrived at an \$85,000 annual salary for Gaona,” as Gaona “did not furnish a W-2, 1099, or tax return.”

Defendant's argument overlooks the parties' respective burdens. Gaona stated that he earned "roughly \$85,000 per year," noting that he earned \$85,038.43 in 2012. He also submitted his wage history as an exhibit, specifically, a table showing gross pay received for each week in 2012. Here, Gaona met his burden. There is no requirement that Gaona furnish any particular type of evidence, such as a tax document, in support of a claim. (See *Gemelli, supra*, 161 Cal.App.4th at pp. 1542-1543 [restitution claim "'based on the amount of loss claimed by the victim or victims or any other showing to the court.'"].) Gaona's table of weekly gross pay from 2012 was sufficient. (See *id.*; *People v. Prosser* (2007) 157 Cal.App.4th 682, 690.) At this point, the burden shifted to defendant to produce evidence establishing the amount of restitution claimed was incorrect. (*Gemelli*, at p. 1543.) Defendant failed to rebut the evidence establishing Gaona's lost wages or otherwise show it should be based on some other, lower figure, such as net wages. Accordingly, the trial court did not abuse its discretion. (*Giordano, supra*, 42 Cal.4th at pp. 663-664.)

III. Disposition

The restitution order is reversed. The trial court is directed to hold a hearing for the limited purpose of determining what discount rate, if any, should be applied to the portions of the restitution order related to future payments.

The clerk of the court is directed upon finality of this opinion to forward a certified copy of this opinion to the State Bar of California (Bus. & Prof. Code, § 6086.7, subd. (a)) and to notify Charles Hendrickson that such action has been taken (Bus. & Prof. Code, § 6086.7, subd. (b)).

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.

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